

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)	
)	
Annual formula rate update and revenue requirement)	Docket No. 15-0287
reconciliation under Section 16-108.5 of the)	
Public Utilities Act.)	

**REPLY BRIEF OF
THE PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO**

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“AG” or “the People”), and the City of Chicago (the “City”), hereby file their Reply Brief in the above-captioned proceeding, pursuant to Section 200.800 of the Rules of the Illinois Commerce Commission (“Commission” or “ICC”), 83 Ill. Admin. Code § 200.800, and the schedule set by the Administrative Law Judges.

I. INTRODUCTION / STATEMENT OF THE CASE

A. LEGAL STANDARD

B. PROCEDURAL HISTORY

On September 9, 2015, Initial Briefs (“IB”) in this electric delivery service annual formula rate update proceeding pursuant to Section 16-108.5 of the Public Utilities Act were filed by Commonwealth Edison Company (“ComEd” or the “Company”), the Staff of the ICC (“Staff”), the People and the City jointly (“AG/City”), and the Citizens Utility Board (“CUB”) jointly with the Illinois Industrial Energy Consumers (“IIEC”). This Reply Brief addresses certain arguments made in ComEd’s Initial Brief. The failure by the People and the City to respond to proposals advanced in other parties’ Initial Briefs, or other arguments in ComEd’s

Initial Brief, should not be viewed as agreement or disagreement with those other proposals and arguments.

As discussed in their Initial Brief, the People and the City continue to recommend adjustments on the following issues, and will discuss these issues in depth below:

- Accounting for accumulated deferred income taxes related to the Company's bad debts; and
- Recovery of 2014 integration costs related to the proposed merger of Exelon Corporation and Pepco Holdings, Inc.

II. OVERALL REVENUE REQUIREMENT

A. 2016 INITIAL RATE YEAR REVENUE REQUIREMENT

B. 2014 RECONCILIATION ADJUSTMENT

C. ROE COLLAR

D. 2016 RATE YEAR NET REVENUE REQUIREMENT

III. SCOPE OF PROCEEDING

A. CHANGES TO THE STRUCTURE OR PROTOCOLS OF THE PERFORMANCE-BASED FORMULA RATE

B. THE DEFINITION OF RATE YEAR AND THE RECONCILIATION CYCLE

C. ORIGINAL COST FINDING

D. ISSUES PENDING ON APPEAL

IV. RATE BASE

A. OVERVIEW

1. 2014 Reconciliation Rate Base
2. 2016 Initial Rate Year Rate Base

B. POTENTIALLY UNCONTESTED ISSUES

1. Plant in Service

- a. Distribution Plant
- b. General and Intangible Plant
- 2. Regulatory Assets and Liabilities
- 3. **Deferred Debits**

AG/City witness David Effron made two adjustment proposals in his Direct Testimony concerning accumulated deferred income taxes (“ADIT”) related to certain deferred debits. These proposals are now uncontested and were not discussed in ComEd’s Initial Brief.

First, Mr. Effron proposed a reduction to rate base related to “Stock Options: Other Equity Based Compensation,” an ADIT item originally included in Account 190, as shown on ComEd’s Exhibit 2.02, page 26, line 33. Mr. Effron argued that the accrued reserve for the Stock Options item is not reflected in ComEd’s determination of the Company’s rate base. To correct this miscalculation, Mr. Effron proposed excluding the ADIT relating to the Stock Options item, reducing rate base in each of the 2014 Reconciliation Year and 2016 Initial Rate Year by \$7.541 million, with a corresponding revenue reduction worth approximately \$863,000 of revenue (including interest) in the 2014 Reconciliation Year and \$754,000 of revenue in the 2016 Initial Rate Year. AG/City Ex. 2.0 at 5-6:104-121; AG/City Ex. 2.1; AG/City Ex. 1.3 at 1:3, 6:2. ComEd witness Newhouse stated in his Rebuttal Testimony that the Company would not contest this adjustment proposal. ComEd Ex. 9.0 at 11:230-236; ComEd Ex. 9.02 at 11:33 (WP 4); ComEd Ex. 9.07 at line 2.

Second, Mr. Effron proposed a reduction to rate base related to Other Current Liabilities, based on certain miscellaneous accruals of liabilities that ComEd asserted should be included in the determination of its rate base, as shown on ComEd’s Exhibit 2.02, page 26, line 19. Because these accruals are not included in operating reserves or deferred credits, or otherwise recognized in the determination of ComEd’s rate base, Mr. Effron proposed excluding the ADIT relating to

these Other Current Liabilities, reducing rate base in each of the 2014 Reconciliation Year and 2016 Initial Rate Year by \$1.434 million, with a corresponding revenue reduction worth approximately \$166,000 of revenue (with interest) in the 2014 Reconciliation Year and \$456,000 of revenue in the 2016 Initial Rate Year. AG/City Ex. 2.0 at 6-7:123-145; AG/City Ex. 2.2; AG/City Ex. 1.3 at 1:4, 6:1. ComEd witness Brinkman stated in her Rebuttal Testimony that the Company would not contest this adjustment proposal. ComEd Ex. 8.0 at 24:503-518; ComEd Ex. 9.02 at 11:19 (WP 4); ComEd Ex. 9.07 at line 9.

Both adjustments were numerically reflected in ComEd's rebuttal and surrebuttal revenue requirement calculations, found at ComEd Exhibits 9.01 and 12.01. ComEd's asserted 2014 Reconciliation Year and 2016 Initial Rate Year revenue requirements described in its Initial Brief accurately reflected the two uncontested adjustments described above. ComEd IB at 4. However, although the numbers in the brief correctly reflected these two issues, ComEd's Initial Brief did not describe or otherwise acknowledge these two uncontested adjustments.

The People and the City respectfully ask the Commission to describe these two uncontested adjustments in its final order in this proceeding, in addition to all the other uncontested adjustments described in ComEd's Initial Brief.

4. Other Deferred Charges
5. Accumulated Provisions for Depreciation and Amortization
6. Accumulated Miscellaneous Operating Provisions
7. Asset Retirement Obligation
8. Customer Advances
9. Customer Deposits
10. Cash Working Capital

11. Construction Work in Progress

C. POTENTIALLY CONTESTED ISSUES

1. Accumulated Deferred Income Taxes

a. ADIT Related to Plant Additions

b. ADIT Related to Bad Debt

The key facts surrounding ComEd's ADIT related to bad debts are largely undisputed. ComEd's Initial Brief confirms general agreement on the required accounting for bad debts and for related deferred income taxes. Certain balance sheet results are determined by accepted accounting practices. The effect of ADIT related to bad debts on ComEd's rate base is one of those. Under Generally Accepted Accounting Principles, ComEd records its best estimate of expected future bad debts (amounts customers ultimately will not pay) in the current period, for financial statement purposes. ComEd IB at 20; AG/City Ex. 1.0 at 22:492-505. These current period accruals create a timing difference between when ComEd records the bad debt expense for book purposes and when ComEd is allowed to take a deduction of actual bad debt expense on its tax return. ComEd IB at 20; AG/City Ex. 1.0 at 22:480-21:491. Specific consideration of uncollectible accounts within the cash working capital revenue collection lag was previously proposed by AG witness Michael L. Brosch, but it was rejected by the Commission in Docket No. 11-0721. ComEd IB at 22.

Moving beyond these agreed facts, the remaining dispute is simply whether ComEd has met its burden of proof to show that an accurate and reasonable determination of ComEd's rate base allows ADIT related to bad debts to increase rate base by \$18.5 million when (a) the Company cannot show that the directly-related Accumulated Provision for Uncollectible Accounts – an offsetting liability account that reduces rate base – is also included in that rate base determination, and (b) the Commission has found (as advocated by ComEd) that the

Accumulated Provision for Uncollectible Accounts is not reasonably considered within ComEd's lead-lag study.

ComEd's Initial Brief advocates that the treatment of ADIT related to bad debts ordered by the Commission in Docket No. 11-0721 be replicated in this case. ComEd IB at 21. In that prior case, the Commission allowed rate base inclusion of a jurisdictionally allocated portion of the ADIT related to bad debts. *Id.* However, the Commission's decision in the prior case addressed a different issue. In Docket 11-0721, ComEd proposed to include **100%** of ADIT related to bad debt in rate base. AG/City Ex. 3.0 at 7:128-129. AG/AARP witness David J. Effron testified that ComEd's proposal was improper because "[l]ess than 100 percent of bad debt expense is allocated to the jurisdictional revenue requirement, and less than 100% of the ADIT on the Accumulated Provision for bad debt should be allocated to the jurisdictional rate base." *Id.* at 7:130-134¹. The Commission agreed with Mr. Effron's proposal, permitting only a portion of ADIT related to bad debts in rate base. That decision confirmed a relationship between jurisdictional bad debts expense and the related ADIT, without making any determination regarding the need to consistently either include or exclude the offsetting balance sheet (ADIT/asset and Accumulated Provision for bad debts/liability) accounts in rate base determinations.

ComEd's Initial Brief glosses over these facts, facts that are consistent with the Commission's decision in Docket No. 11-0721, but show that the Commission's decision there is not determinative of the disputed issue in this case. In its Initial Brief, ComEd complains that the AG, inconsistently with its position in the prior case, now suggests that the Commission completely exclude this deferred tax asset from rate base. IB at 21. The more accurate

¹ AG/AARP Exhibit 2.0 (Revised) at 4:86-90, Docket No. 11-0721, available at: <http://www.icc.illinois.gov/downloads/public/edocket/310394.pdf>.

description of the AG/City proposal is to remove the *remaining* portion of the ADIT related to bad debts that was not previously excluded in Docket No. 11-0721. Mr. Brosch explained that, in Docket No. 11-0721, Mr. Effron was not assigned responsibility for review of ComEd's Cash Working Capital lead-lag study. As a result, he did not need to consider and was not familiar with whether ComEd's Accounts Receivables or the corresponding offset for Accumulated Provision for Uncollectibles were included in rate base. This occurred because the responsibility for review of ComEd's Cash Working Capital in Docket No. 11-0721 was with Mr. Brosch, not Mr. Effron. Accordingly, Mr. Effron did not propose a more inclusive rate base adjustment, as he was not aware that ComEd did not account for the Accumulated Provision for Uncollectibles in rate base in Docket No. 11-0721. AG/City Ex. 3.0 at 8:142.

However, the issue was not ignored by the AG in Docket No. 11-0721: Mr. Brosch proposed modifications to ComEd's lead-lag study that would have accounted for the impact of uncollectible accounts upon the Company's Accounts Receivables. Mr. Brosch's proposal would have achieved precisely the same result the AG advocates in this case. But, in that case, ComEd prevailed on this Cash Working Capital dispute. As a result, there was no rate base recognition of ComEd's Accumulated Provision for Uncollectible Accounts in Docket No. 11-0721, and ComEd's rate base calculations have failed to recognize the impact of Accumulated Provision for Uncollectible Accounts in subsequent formula rate update dockets, including the instant Docket No. 15-0287. *Id.* at 8:147-9:170.

These historical facts are important for two reasons. First, ADIT related to bad debts and the Company's Account 144 Accumulated Provision for bad debts are directly related to one another. As Mr. Brosch explained, it is fundamentally unfair to increase rate base for ADIT related to bad debts when the associated accounting reserve balance arising from accrual-basis

accounting for bad debts is not included to reduce rate base. AG/City Ex. 1.0 at 22:513. Indeed, on cross-examination, ComEd witness Christine M. Brinkman conceded that in ComEd's last formula rate update case, Docket No. 14-0312, she supported the accounting principle that Mr. Brosch advocates here. In particular, Ms. Brinkman testified in Docket No. 14-0312 that if ADIT related to the reconciliation balance is included in rate base, then the related asset or liability should also be included in rate base. Tr. at 49:1-21. This "matching" or "following" is precisely what Mr. Brosch recommends in this case. That is, if, as ComEd recommends, ADIT debit balance related to bad debt is included in rate base, then the related asset or liability, in this instance, the Account 144 Accumulated Provision for Uncollectibles credit balance must also be included in rate base.

Second, ADIT related to Bad Debts and the associated Accumulated Provision for Bad Debts in Account 144 *could* have been reasonably included in rate base in Docket No. 11-0721, but the Commission's rejection of Mr. Brosch's lead-lag study adjustment for bad debts severed the required match between ADIT related to bad debts and the related Account 144 balance sheet liability account. As explained above, that matching is required by the accounting principle endorsed by ComEd in Docket No. 14-0312 and relied on by the AG in this case.

While ComEd's Initial Brief correctly notes that the Commission "rejected" Mr. Brosch's proposed adjustment to the revenue collection lag in ComEd's cash working capital calculation, ComEd falsely asserts (ComEd IB at 22) that AG/City are asking that that issue be re-litigated here. In fact, AG/City are not asking for re-litigation of the Commission's cash working capital decision. Rather, as noted by Mr. Brosch in his Rebuttal Testimony, the relief being proposed is appropriate *because of* the Commission's prior lead-lag study ruling:

The record in Docket No. 11-0721 did not link or condition Mr. Effron's testimony regarding the rate base treatment of ADIT

related to bad debts to my lead lag study recommendation that the a provision for uncollectibles be considered to reduce cash working capital in rate base. That being said, Mr. Effron's testimony in Docket No. 11-0721, which allowed a portion of the ADIT related to uncollectibles in rate base, was consistent with my testimony that the uncollectibles reserve should be taken into account in the calculation of the revenue lag. It follows, then, if the uncollectibles reserve is not taken into account in the calculation of the revenue lag, then the related ADIT should be removed from rate base. To date, this has not been done. However, the Commission has an opportunity at this time to correct this oversight.

AG/City Ex. 3.0 at 9:176-186.

In its Initial Brief, ComEd also argues that the Company has effectively pre-paid the taxes on collection and that ComEd will not receive the corresponding tax benefit until later. ComEd IB at 20. The timing of tax payments related to bad debts was not raised as an issue by Mr. Brosch and he had no opportunity to respond to this point that was first made by Ms. Brinkman in her Surrebuttal Testimony. The timing of cash flows that ComEd now relies upon is normally examined and accounted for within cash working capital studies. As noted above, ComEd has consistently declined to do so, and the AG's proposal for such recognition was rejected when ComEd opposed it.

The Commission should not accept ComEd's tardy and inconsistent "prepayment" arguments. First, this new argument to support ComEd's direct testimony proposal to "un-match" offsetting rate base elements was first made after the direct and rebuttal testimony phases, when no party could respond. Second, the argument is inconsistent with ComEd's consistent denial of a relationship to cash flow accounting. Indeed, at ComEd's urging, the Commission ruled that the timing of uncollectible collections and the corresponding Account 144 Accumulated Provision for Uncollectibles liability account should **not** be considered within lead-lag studies. Third, this particular cash flow argument is raised outside the context of

ComEd's lead-lag study, which does not account for the alleged effect ComEd relies upon. It is disingenuous for ComEd to raise in surrebuttal testimony cash flow timing issues arising from bad debt accounting in response to testimony on ComEd's failure to match offsetting elements of its rate base determination.

ComEd also argues, "Mr. Brosch's theory that considering bad debts within lead lag studies would lead to a decrease in the collection lag is based on the false assumption that there is no revenue collections lag with uncollectibles." *Id.* at 22. As with the "pre-paid the taxes" argument, this point may resonate within a lead-lag study discussion of cash flow timing, but has no home in this docket because the AG/City's argument in this case is not premised on the treatment of cash working matters that were considered in Docket No. 11-0721 -- determinations noted in the Company's own Initial Brief.

The AG and the City agree with ComEd that "no one can dispute that this deferred tax asset exists." *Id.* at 23. Indeed, ComEd's Ex. 9.02 at 11 (WP 4) shows that many Account 190 deferred tax assets exist, including the "Provision for Bad Debt" amount shown at line 8. Some of the deferred tax assets listed on pages 11 and 12 of ComEd Ex. 9.02 are partially included in rate base (column G) based upon use of an "Allocator" in column F, while others are treated as "Non DST". The "dispute" with respect to ADIT related to bad debts (found on line 8) is whether the balance should be allowed to increase rate base, or instead be treated as-non DST. Ms. Brinkman admitted certain highly relevant facts that support Commission adoption of the AG/City position that ADIT related to bad debts be excluded from rate base when the matching offset is excluded:

1. ComEd does not make a simple exclusion from rate base for the accumulated provision for Uncollectibles in Account 144 in its formula rate template. Tr. at 57.
2. Ms. Brinkman believes that Account 144 has not been included directly in rate base because, “that account should be considered in the cash working capital calculation – within the cash working capital calculation collection lag.” Tr. at 66.
3. Consistent with its winning argument in Docket No. 11-0721, ComEd has not accounted for the Accumulated Provision for Uncollectibles liability in its lead-lag study.

ComEd has shown no reasonable basis for rate base inclusion of the ADIT deferred tax asset balance that is related to the Accumulated Provision for Uncollectibles, but unmatched in rate base by its related offset. The effect is that ComEd’s rate base is overstated, and the utility earns on more than its actual, prudently incurred, and used and useful investment for providing service to public utility customers.

As a result, the Commission should adopt Mr. Brosch’s recommendation regarding rate base exclusion of ADIT for bad debt that ComEd has included, which results in rate base being overstated by around \$18.5 million. To reflect Mr. Brosch’s proposal to remove ADIT associated with bad debts from rate base, the Commission should adopt AG/City’s recommendation that ComEd’s 2014 Reconciliation Year revenue requirement (with interest) be reduced by \$2,117,000 and its 2016 Initial Rate Year revenue requirement be reduced by \$1,848,000, for a total reduction to 2016 net revenue of \$3,965,000. AG/City Ex. 1.3 at 1.

2. Materials & Supplies

V. OPERATING EXPENSES

A. OVERVIEW

B. POTENTIALLY UNCONTESTED ISSUES

1. Distribution O&M Expenses
2. Customer-Related O&M Expenses
3. Uncollectibles Expense
4. Administrative and General Expenses
5. Charitable Contributions
6. **Merger Expense**

In its Initial Brief, ComEd repeats a commitment made by its witness, Ms. Brinkman, during supplemental oral direct examination at the evidentiary hearing: if the proposed merger of Exelon Corporation (“Exelon”) and Pepco Holdings, Inc. (“Pepco”) has not closed by December 1, 2015, ComEd will voluntarily withdraw its request to recover 2014 Exelon / Pepco merger related costs. ComEd IB at 30.

As the People and the City stated in their Initial Brief, in the interest of simplifying the issues in this proceeding, AG/City agree to the proposal made by Ms. Brinkman, but the proposal needs some additional terms to be made actionable by the Commission in a way that assures recovery of only appropriate costs. The People and the City reiterate their proposed conditions stated at the bottom of page 19 and on page 20 of their Initial Brief.

First, the Commission’s Order must state expressly the alternative revenue requirement amounts, the determinative conditions that must exist on December 1, 2015, and the process for determining resulting rates pursuant to the Order.

Second, “closed” should mean that all actions and conditions contemplated in Articles I, II, III, IV, and VII of the Agreement and Plan of Merger² among Pepco, Exelon, and Purple Acquisition Corp. dated April 29, 2014 as required for the “Closing” (as defined in Section 1.2 of that agreement) shall have occurred.

Third, the Company should submit a certification by December 2, 2015 in this proceeding stating whether the Proposed Merger closed by 11:59 PM CST on December 1, 2015, and providing supporting documentation (in the form of a Form 8-K filed with the U.S. Securities and Exchange Commission certifying the closing of the merger) if the Proposed Merger did in fact close by 11:59 PM CST on December 1st. AG/City further request that the Commission take administrative notice of such a certification from ComEd, pursuant to Section 200.640(a)(7) of the Commission’s Rules.

The People and the City propose, as they did in their Initial Brief, that if ComEd does not submit such evidence on or before December 2, 2015, the Commission should, consistent with Ms. Brinkman’s proposal and its appropriate Order (described above), disallow recovery in this proceeding of the 2014 integration costs associated with the Proposed Merger.

7. Charges for Services Provided by BSC
8. Regulatory Commission Expense (Rock Island Clean Line)
9. Depreciation and Amortization Expense
10. Taxes
11. Lobbying Expense

² The Agreement and Plan of Merger may be found on the website of the U.S. Securities and Exchange Commission via this April 30, 2014 Form 8-K filing: <http://www.sec.gov/Archives/edgar/data/1109357/000119312514172955/d720164dex21.htm>. The People hereby request that the Commission take administrative notice of this Agreement and Plan of Merger pursuant to Section 200.640(a)(7) of the Commission’s Rules.

12. Rate Case Expenses
13. Corporate Credit Cards (Employee Recognition)
14. Long Term Incentive Compensation Program Expenses
15. Key manager Long Term Performance Plan (“LTPP”)
16. Long Term Performance Cash Awards Program (“LTPCAP”)
17. Gross Revenue Conversion Factor

C. POTENTIALLY CONTESTED ISSUES

1. Short Term Incentive Compensation Program Expenses
 - a. Annual Incentive Program (“AIP”)
 - b. Derivative Adjustments
2. Employee Savings Plan
3. Outside Services
4. Industry Association Dues

VI. RATE OF RETURN

VII. RECONCILIATION

A. OVERVIEW

B. POTENTIALLY CONTESTED ISSUES

1. Calculation of Interest on Reconciliation Balance

VIII. REVENUES

IX. COST OF SERVICE AND RATE DESIGN

X. OTHER

XI. CONCLUSION

For all of the reasons stated above, the People of the State of Illinois and the City of Chicago respectfully request that the Commission enter an Order consistent with the recommendations in this Reply Brief and in their Initial Brief.

September 16, 2015

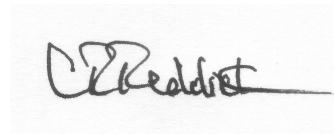
Respectfully submitted,

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